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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,281	07/19/2001	Peter Robert Foley	CM2492	2076

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/910,281	FOLEY ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE filed 6/13/05*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *51-54, 56-68, 72-91* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *51-54,56-68 and 72-91* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/13/05, 6/14/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 51-54, 56-68, and 72-91 are pending. Note that, the changes made in the Examiner's Amendment mailed 9/23/04 have been incorporated into the claims and should be included as part of the claims in any amendment subsequently filed.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 6/13/05 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 51-54, 56-68, and 72-91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 51, the claim recites that the composition comprises from 10% to 40% by weight of an organic solvent system consisting of: 1 to 15% of an amine and 7 to 30% by weight of a combination of water-miscible solvent and limited water-miscible solvent. This limitation is vague and indefinite in that the specific solvent

system "consists" of three components; The upper limits of the ranges for each component is at most 45% (15% + 30%) so it is unclear what makes up the other 55% by weight of the solvent system since the specific solvent system refers to organoamine, a water-miscible organic solvent, and a limited water-miscible organic solvent and recites "consists" of which would indicate that the specific solvent system claimed is limited to 3 components. Clarification is required.

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application PCT/US00/34906, filed 12/21/00, PCT/US00/19619, filed 7/19/00, and PCT/US00/20255, filed 7/25/00. It is noted, however, that while applicant appears to have filed certified copies of the applications as required by 35 U.S.C. 119(b), these certified copies have not been placed in the file and cannot be found. Thus, priority has not been granted and it is requested that applicant refile certified copies of the above-listed documents.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 51-54, 56-68, 72-85, and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 60-141800. Note that, a translation of this document has been requested.

'800 teaches a liquid detergent composition which removes firmly stuck stains formed by degrading oils by heat and oxidation on surfaces of kitchen and kitchen ware. The compositions contain 0.1 to 10% by weight of a swelling clay powder such as montomorillonite, hectorite, etc.; 0.1 to 30% by weight of a solvent such as triethylene glycol, monopropylene glycol monomethyl ether, diethylene glycol monobutyl ether, monopropylene glycol monomethyl ether, etc.; from 1 to 20% by weight of surfactant such as an amine oxide; and 0.5 to 30% by weight of an alkaline agent including monoethanolamine, diethanolamine, etc. Additionally, the compositions may contain other ingredients such as abrasives, perfumes, etc. See Abstract.

Note that, with respect to the pH and the other physical parameters of the composition as recited by the instant claims, the Examiner asserts that the broad

teachings of '800 would encompass compositions having the same physical parameters of the composition as recited by the instant claims because '800 teaches compositions containing the same components in the same proportions as recited by the instant claims.

'800 does not teach with sufficient specificity, a cleaning composition having the specific physical parameters containing an organoamine, a water-miscible solvent, a limited water-miscible solvent, a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an organoamine, a water-miscible solvent, a limited water-miscible solvent, a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '800 suggest a cleaning composition having the specific physical parameters containing an organoamine, a water-miscible solvent, a limited water-miscible solvent, a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 51-54, 56-68, 72-85, and 87 rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000-044990 in view of JP 141,800. Note that, a translation of JP 2000-044990 has been requested.

'990 teaches a liquid detergent composition for hard surfaces containing 0.01 to 20% by weight of a surfactant, 0.01 to 20% by weight of a solvent, and 3 to 20% by weight of an amine compound. Preferred surfactants include anionic, nonionic, and amphoteric surfactants. Preferred solvents include monopropylene glycol monobutyl ether, monopropylene glycol monopropyl ether, and monopropylene glycol monoethyl ether. Suitable amine compounds include monoethanolamine, diethanolamine, triethanolamine, etc. The pH of the composition is from 10 to 13. See Abstract.

'990 does not teach the use of amine oxides, a water-miscible solvent such as diethylene glycol monobutyl ether, or a cleaning composition having the specific physical parameters containing an organoamine, a water-miscible solvent, a limited water-miscible solvent, a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

'800 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a solvent such as diethylene glycol monobutyl ether in the composition taught by '990, with a reasonable expectation of success, because '800 teaches the equivalence of diethylene glycol to monopropylene glycol monomethyl ether in a similar cleaning composition and further, '990 teaches the use of monopropylene glycol monoethyl ether.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an amine oxide surfactant in the composition taught by '990, with a reasonable expectation of success, because '800 teaches the use of an

amine oxide surfactant in a similar cleaning composition and further, '990 teaches the use of nonionic surfactants in general.

Note that, with respect to the specific physical parameters of the composition as recited by the instant claims, the Examiner asserts that the broad teachings of '990 in combination with '800 would encompass compositions having the same physical parameters of the composition as recited by the instant claims because '990 teaches compositions containing the same components in the same proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an organoamine, a water-miscible solvent, a limited water-miscible solvent, a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '990 in combination with '800 suggest a cleaning composition having the specific physical parameters containing an organoamine, a water-miscible solvent, a limited water-miscible solvent, a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 88-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 141800 as applied to claims 51-54, 56-68, 72-85, and 87 or JP 2000-044990 in view of JP 141800 as applied to claims 51-54, 56-68, 72-85, and 87, and further in view of Trinh et al (US 6,001,789).

'800 and '990 are relied upon as set forth above. However, '800 or '990 do not specifically teach the use of ionone perfumes, musk, or cyclodextrin in addition to the other requisite components of the composition as recited by the instant claims.

Trinh et al teach a cleaning composition in which a perfumes including ionones and musks are absorbed into a cyclodextrin carrier material to form complexes. See abstract and col. 7, line 35 to col. 12, line 55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume-cyclodextrin complex in the cleaning composition taught by '800 or '990 in combination with '800, with a reasonable expectation of success, because Trinh et al teach the use of a perfume-cyclodextrin complex a similar cleaning composition and further, '800 or '990 teach the use of perfumes in general.

Claim 86 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 141800 as applied to claims 51-54, 56-68, 72-85, and 87 or JP 2000-044990 in view of JP 141800 as applied to claims 51-54, 56-68, 72-85, and 87, and further in view of Ofosu-Asante (US 5,739,092).

'800 or '990 are relied upon as set forth above. However, '800 or '990 do not teach the use of a divalent cation in addition to the other requisite components of the composition as recited by instant claim 86.

Ofosu-Asante teaches liquid or gel dishwashing detergent compositions containing alkyl ethoxy carboxylate surfactant, calcium or magnesium ions, etc. See Abstract. The presence of calcium or magnesium ions improves the cleaning of greasy

soils for compositions, manifest mildness to the skin, and provide good storage stability. See column 6, lines 40-55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a magnesium or calcium ion(s) in the cleaning compositions taught by '800 or '990 in combination with '800, with a reasonable expectation of success, because Ofosu-Asante teaches the advantageous properties imparted to a similar hard surface cleaner when using magnesium and/or calcium ions.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 51-54, 56-68, and 72-91 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-37 of copending Application No. 11/151027. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory R. Del Cotto

Primary Examiner
Art Unit 1751

GRD
August 21, 2005